



# VIRGINIA CRIMINAL SENTENCING COMMISSION



## **Virginia Criminal Sentencing Commission: 2017 Annual Report**

**Presentation to the  
Senate Finance Public Safety Subcommittee**

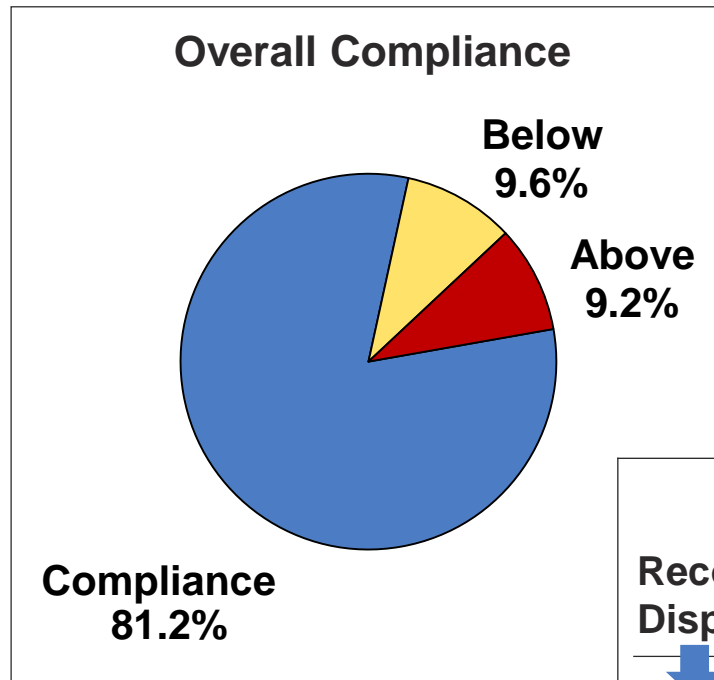
**January 8, 2018**



## Activities in 2017

- **Monitoring and oversight of Sentencing Guidelines**
- **Training, education and other assistance related to the preparation and use of Sentencing Guidelines**
- **Estimating the impact of proposed legislation**
- **Assisting with the prison and jail population forecasting process**
- **Providing data and analysis to other agencies**
- **Working with DCJS and Magistrate Services to develop a data strategy to examine the pre-trial stage**
- **Implementing a study to update trends regarding the number of juveniles tried as adults**
- **Continuing development of sentencing guidelines automation system**



# In FY2017, Circuit Court judges continued to comply with the Sentencing Guidelines at a high rate overall.

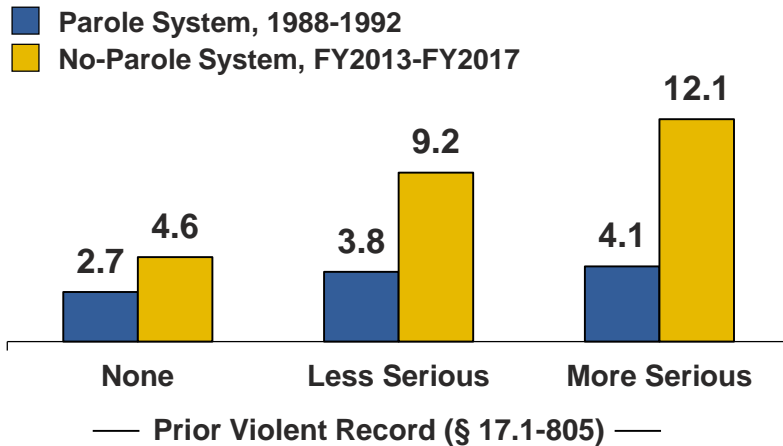


Recommended Disposition	Actual Disposition 		
	Probation	Incarceration 1 day to 6 mos.	Incarceration > 6 mos.
 Probation	<b>73.6%</b>	22.5%	4.0%
Incarceration 1 day to 6 mos.	11.1%	<b>79.9%</b>	9.0%
Incarceration > 6 mos.	5.6%	7.5%	<b>87.0%</b>

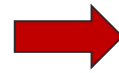


## Prison Time Served (in years)

### Robbery of Business with Firearm

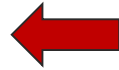


Source: Sentencing Guidelines Data, FY2013-2017

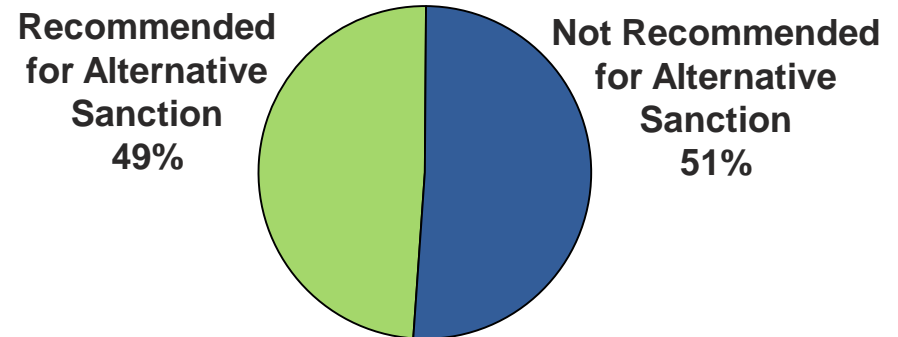


**Violent offenders, particularly repeat violent offenders, are serving longer under truth-in-sentencing.**

**Through legislatively-mandated risk assessment, roughly 3,000 low-risk drug and property offenders are recommended for alternative sanctions each year.**



## Risk Assessment Outcomes 6,803 Eligible Offenders



Source: Virginia Criminal Sentencing Commission – 2017 Annual Report

Analysis is based on offenders recommended by the sentencing guidelines for prison or jail incarceration.



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## **Recommendations in the Sentencing Commission's 2017 Annual Report**

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# **Revisions to Virginia's Sentencing Guidelines**

## **§ 17.1-806**

**Modifications recommended by the Commission must be presented in an annual report and submitted to the Governor, Chief Justice, and the Legislature each December 1.**

**Virginia Criminal  
Sentencing Commission**



**2017 ANNUAL REPORT**  
DECEMBER 1, 2017

**Legislative session provides an opportunity for lawmakers to accept or reject the Commission's recommendations.**

**The recommendations, unless otherwise provided by law, become effective the following July 1 (§ 17.1-806).**

**The 2017 Annual Report is available at:  
[www.vcsc.virginia.gov/reports.html](http://www.vcsc.virginia.gov/reports.html)**

## **About the Commission's Recommendations**

- **The sentencing guidelines are based on analysis of actual sentencing practices and are designed to provide judges with a benchmark that represents the typical (average) case.**
- **Recommendations for revisions to the guidelines are based on the best fit of the available data.**
- **Recommendations are designed to closely match the rate at which judges sentence offenders to prison and jail.**

**No impact on correctional bed space is anticipated since the Commission's recommendations are based on analysis of current sanctioning practices.**

# 2017 Recommendations

## RECOMMENDATION

1

Sentencing Patterns for  
Provision of Wireless Device to/  
Possession of Wireless Device by  
a Prisoner (§ 18.2-431.1)  
FY2013-FY2017

Disposition	Percent	Median Sentence
No Incarceration	10.5%	n/a
Incarceration up to 6 Mos.	60.1%	6 Mos.
Incarceration of More than 6 Mos.	29.4%	9 Mos.

Amend the sentencing guidelines to add the provision of a wireless device to a prisoner and possession of a wireless device by a prisoner (§ 18.2-431.1) as covered offenses.

- Matched current rate of incarceration
- Set scores to best reflect median sentence observed in data





# 2017 Recommendations

## RECOMMENDATION

2

Amend the sentencing guidelines to:

- Add the unlawful discharge of a firearm or missile in/at an occupied building (§ 18.2-279) as a covered offense, and
- Modify the existing guidelines for maliciously discharging a firearm or missile in/at an occupied building (§ 18.2-279) to better integrate the new guidelines offense.



# 2017 Recommendations

## RECOMMENDATION

2

Add the unlawful discharge of a firearm or missile in/at an occupied building (§ 18.2-279) as a covered offense.

Sentencing Patterns for  
Unlawful Discharge of a Firearm or  
Missile in/at an Occupied Building  
(§ 18.2-279)  
FY2013-FY2017

Disposition	Percent	Median Sentence
No Incarceration	43.1%	n/a
Incarceration up to 6 Mos.	37.9%	3.7 Mos.
Incarceration of More than 6 Mos.	19.0%	1.5 Yrs.

- Matched current rate of incarceration
- Set scores to best reflect median prison sentence observed in data



# 2017 Recommendations

## RECOMMENDATION

2

Modify the existing guidelines for maliciously discharging a firearm or missile in/at an occupied building (§ 18.2-279).

- Increase primary offense score on Section B (Probation/Jail recommendation)



### Primary Offense

A. <u>Maliciously</u> discharge firearm, etc., in/at occupied building (1 count) .....	8	← Revised
<u>Unlawfully</u> discharge firearm, etc., in/at occupied building (1 count) .....	8	← New
B. Discharge firearm from vehicle (1 count) .....	8	
C. Possess firearm on school property (1 count) .....	7	
D. Possession of sawed-off shotgun (1 count) .....	6	
E. Carry concealed weapon, 2nd or 3rd offense (1 count) .....	7	
F. False statement on firearm consent form (1 count) .....	1	
G. Possession of firearm, other weapon, explosives or ammunition by convicted felon (1 count) .....	7	

Score

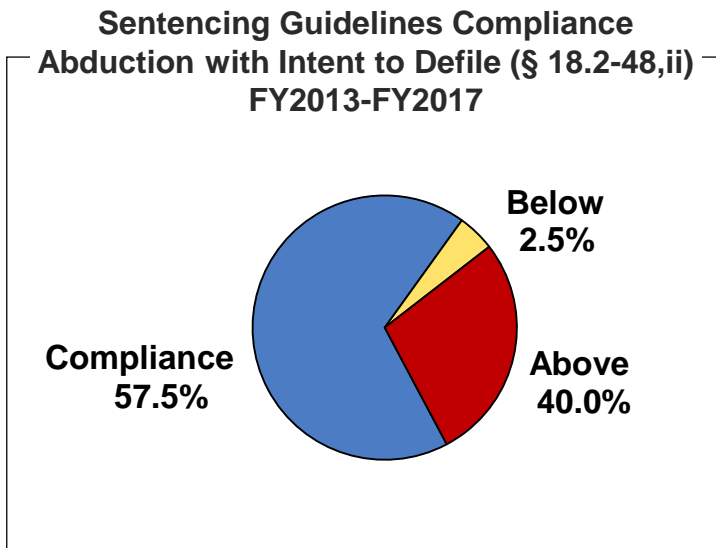
# 2017 Recommendations

## RECOMMENDATION

3

Revise the sentencing guidelines for abduction with the intent to defile (§ 18.2-48,ii) to better reflect current judicial sanctioning practices.

- Increase primary offense score to recommend longer prison terms
  - Prison recommendation will increase by 4 to 44 months depending on the number of counts and prior record



# 2017 Recommendations

## RECOMMENDATION

4

Modify the Burglary sentencing guidelines to reflect sentencing practices in cases involving an additional offense of murder or manslaughter and to account for statutory maximum penalties.

### Burglary Sentencing Guidelines – Current Section C Factor



#### Type of Additional Offenses

Additional Offense with VCC Prefix of “MUR” .....	140
Additional Offense of Completed Aggravated Malicious Wounding (§ 18.2-51.2) .....	55
Additional Offense of Completed Malicious Wounding (§ 18.2-51) .....	35
Additional Offense of Attempted/Conspired Malicious Wounding .....	8

Score

### Burglary Sentencing Guidelines – Recommended Section C Factor



#### Type of Additional Offenses

Additional Offense of Murder with <b>Statutory Maximum of 40 Years or More</b> .....	140	← Revised
Additional Offense of Murder with <b>Statutory Maximum of 20 Years or Less</b> .....	74	← New
Additional Offense of Completed Malicious Wounding (§ 18.2-51) .....	35	
Additional Offense of Attempted/Conspired Malicious Wounding .....	8	

# 2017 Recommendations

## RECOMMENDATION

5

**Direct guidelines preparers to no longer score probation or other suspended sentence violations as additional offenses on the sentencing guidelines for felony offenses.**

- **To reduce inconsistencies in guidelines recommendations for offenders found in violation of the conditions of probation.**



# Scoring Probation Violations as Additional Offenses

- In some instances, the probation violation guidelines recommend a relatively lengthy sentence for a technical violation, while a probation violation handled alongside a new felony conviction often does not increase the sentencing guidelines recommendation significantly.
- In addition, guidelines users have expressed concern that, when a probation violation or good behavior violation is scored as an additional offense to a felony, the points given do not accurately reflect the sentence ordered for the violation.
  - Data indicate when combined into one event, the impact of the violation is not adequately weighed by the guidelines.



# **Preparation of Sentencing Revocation Report (SRR) and Probation Violation Guidelines (PVG)**

**Since July 1, 2010, the Appropriation Act has specified that a Sentencing Revocation Report and, if applicable, the Probation Violation Guidelines, must be presented to the court and reviewed by the judge for any violation hearing conducted pursuant to § 19.2-306.**

**See Item 42 of Chapter 836  
(Appropriation Act) adopted by  
the 2017 General Assembly**

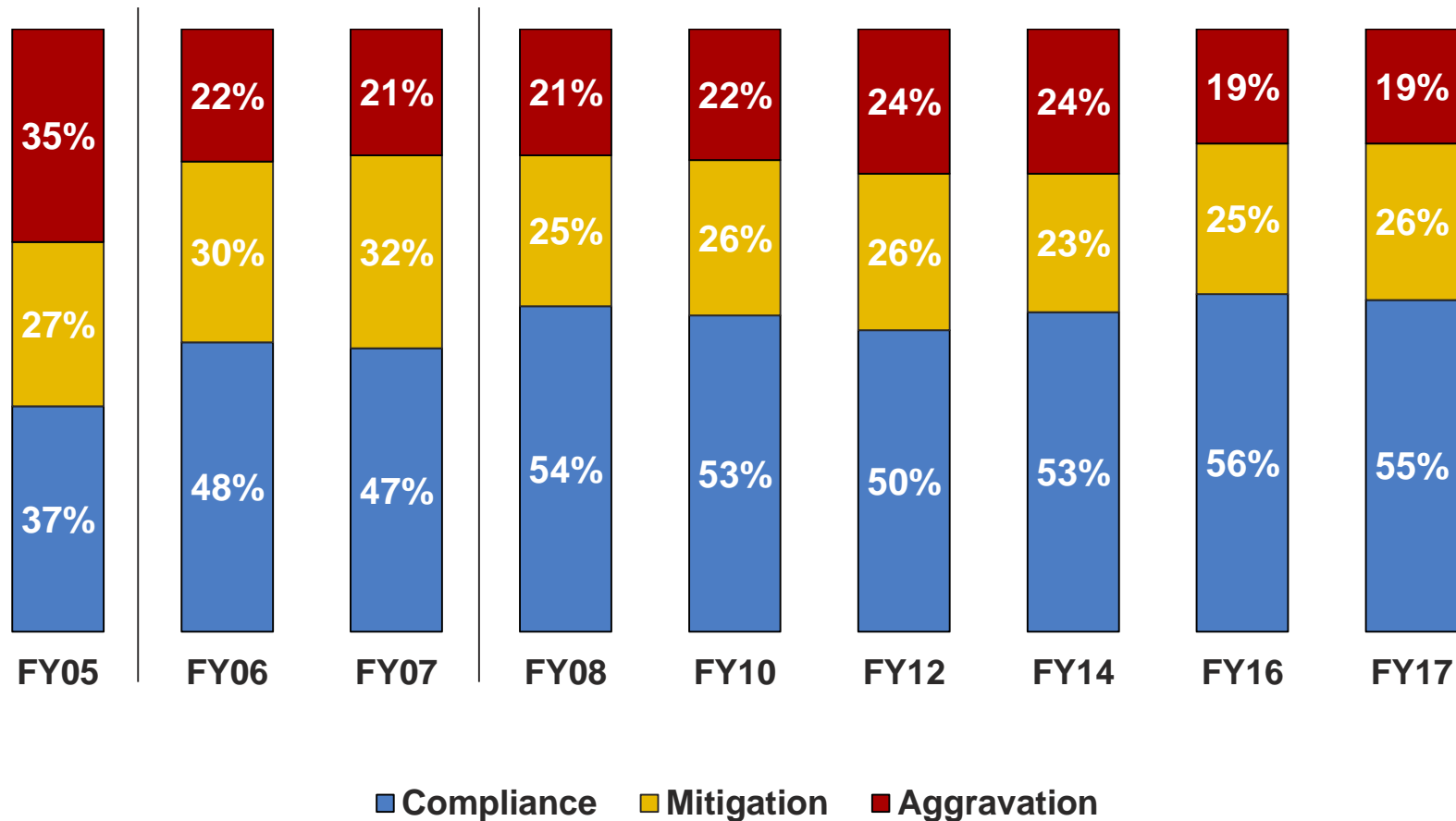




# Probation Violation Guidelines for Technical Violations

## Compliance by Fiscal Year

### FY2005 – FY2017



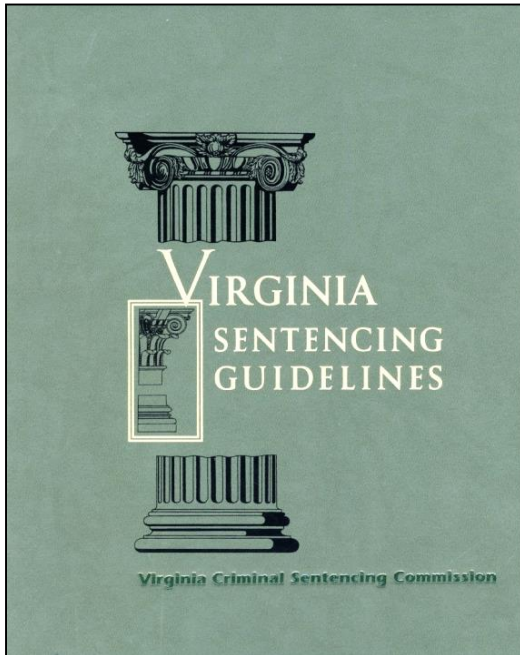
Note: Analysis includes only cases in which the probationer was found in violation and the probation officer indicated the specific conditions violated. Analysis excludes cases with scoring errors.

# Considerations for Revision of Probation Violation Guidelines

- Although past amendments to the probation violation guidelines have increased compliance, the compliance rate remains relatively low.
- Multiple criminal justice practitioners have requested that the Sentencing Commission revise the guidelines associated with probation violations, including:
  - Modifying existing factors,
  - Accounting for additional factors beyond those currently covered, and
  - Expanding probation violation guidelines to cover “New Law” (Condition 1) violators.



# Probation Violation Guidelines Study



**The Sentencing Commission has approved a new study of probation violations that will provide the foundation needed to examine the feasibility of revising the guidelines used in revocation cases.**

**Projected completion date for this project is June 2019.**

**Any recommendations resulting from this study must be presented to the General Assembly in the Commission's annual report, submitted each December 1.**



